

## REMARKS

### Claim Status

Claims 1-3, 5-7, 10-11, 15-17 and 19 are pending in the present application. No additional claims fee is believed to be due. Claims 4, 8-9, 12-14 and 18 were previously canceled without prejudice.

Claims 1 and 10 are herein amended to recite a fecal storage element that is a macroporous storage element. Support for this amendment is found, for example, at page 27, lines 4-20 of the specification as originally filed. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

### Rejections Under 35 U.S.C. §103(a) Over Thompson, Sneyd, Ahr, Radel, Moore and Lash

Claims 1-3, 5-7, 10-11 and 15-19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Thompson, et al. (US 5,281,208), and thereby, by incorporation, Thompson (US 3,929,135), Sneyd, et al. (Kimberly-Clark EP 215417), Ahr (US 4,463,045), and thereby, by incorporation, Radel (US 4,342,314), Moore, et al. (US 4,898,642) and Lash, et al. (US 4,935,022).

The Office Action states that the claims do not require a "macroporous storage element." See Office Action at Page 9. As such, Applicants have amended Claims 1 and 10 to require that the fecal storage element is a macroporous storage element. Thompson does not teach or suggest a fecal storage element that is a macroporous storage element.

Second, Thompson teaches away from the use of a macroporous storage element, and, therefore, does not support a *prima facie* case of obviousness (see MPEP § 2145(X)(D)). See, for example, Thompson at Col. 8, lines 53-63:

The objective is to provide a gradient of capillary suction between the topsheet and underlying layer or layers of the articles herein, such that fluid is

drawn into the “z” direction and away from the surface of the article into its ultimate storage layer. Empirically, capillary suction is related to adhesion tension and inversely related to the size of the openings—i.e., in the typical case, the openings in the topsheet will be larger than the intra-fiber capillary channels, which, in turn, will be larger than the inter-fiber capillary channels in a fibrous storage core.

In contrast to Thompson’s emphasis on the importance of a gradient of capillary suction, the present specification explicitly defines “macroporous” as referring “to materials having pores too large to effect capillary transport of fluid.” See page 27, lines 10-11 (emphasis added). Thus, Thompson teaches away from the presently claimed macroporous storage element.

For at least these reasons, amended Claims 1 and 10 are believed to be patentable over Thompson. All other claims depend from Claim 1 or Claim 10, and therefore include all the limitations of Claim 1 or Claim 10. Thus, Claims 2-3, 5-7, 11, and 15-17 are believed to be patentable over Thompson for at least the same reasons as Claims 1 and 10.

Further, Lash teaches away from using particles having a nominal size between about 2 mm and about 16 mm. In particular, Lash teaches that particle size should be limited. See Lash at Col. 15, lines 4-6. Lash not only teaches that the mass median particle size should, ideally, range from 420 to 700 microns (see Lash at Col. 14, lines 55-63), but that outliers from the median particle size up to 1410 microns should be limited to no more than about 16% by weight of all of the particles. See Lash at Col. 15, lines 4-20. In contrast, Claim 19 recites particles having a nominal size between about 2 mm and about 16 mm (emphasis added). Thus, Lash teaches away from the use of macroparticles, and, as discussed above, Thompson teaches away from the use of a macroporous material.

For at least these reasons, amended Claims 1 and 10 are believed to be patentable over Thompson ‘208 and/or Thompson ‘135, Sneyd, Ahr, Radel, Moore, and Lash. All other claims depend from Claim 1 or Claim 10, and therefore include all the limitations of Claim 1 or Claim 10. Thus, Claims 2-3, 5-7, 11, 15-17, and 19 are believed to be patentable over the

Appl. No. 10/757,813  
Docket No. 7294C  
Amdt. dated December 17, 2009  
Reply to Office Action mailed on September 22, 2009  
Customer No. 27752


references for at least the same reasons as Claims 1 and 10. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By   
Laura L. Whitmer  
Registration No. 52,920  
(513) 983-6431

Date: December 17, 2009  
Customer No. 27752